



IAC-AH-VP-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/10605/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 January 2016**

**Decision & Reasons Promulgated
On 13 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**MR THANUSAN THAYALAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Jegarajah, Counsel instructed by Jacobs & Co Solicitors

For the Respondent: Mr K Norton, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellant, Mr Thanusan Thayalan, a citizen of Sri Lanka, appealed against the refusal of the Respondent to grant him international protection. His ensuing appeal was heard at Taylor House on 24 June 2015 by Judge Bart-Stewart. Both parties were represented, the Appellant by Counsel. In a decision of 21 July, promulgated on 11 August, 2015, the

appeal was dismissed on political, asylum and Article 8 human rights grounds.

2. Permission to appeal was refused to the Appellant on 7 September 2015 by Judge Astle, essentially on the basis that the application represented disagreement with the judicial findings. It was granted on second application on 12 October 2015 by Judge Perkins in the following terms:
 - “1 I have given permission on each ground.
 - 2 It may well be that the First-tier Tribunal gave no express consideration to a letter from ‘Minnalkili’ and no express consideration to sur-place activities. The grounds do not refer expressly to the sources of these arguments and the Applicant must be able to explain clearly to the Upper Tribunal how the points were raised before the First-tier and how the failure to consider them (assuming that is established) is material. Even if they are material errors they may be errors that are easy to correct.
 - 3 The criticism that the First-tier Tribunal wrongly decided to disbelieve the appellant before considering the medical report is potentially a serious error. I am far from satisfied that a fair reading of the Decision requires a finding that the judge erred as alleged but the point is reasonably arguable”.
3. The Respondent submitted a Rule 24 response on 20 October 2015, essentially submitting that the judge had given a clear and reasoned approach to the evidence and had reached findings which were open to her from it.
4. The Appellant, accompanied by his aunt, attended the error of law hearing, which took the form of submissions. Explaining that she had only recently been instructed, Miss Jegarajah submitted additional grounds, to which Mr Norton raised no objection and which I admitted.

Decision

5. When he arrived in the UK the Appellant was aged 14. The judge recognised in her decision that aspects of his asylum interview were unsatisfactory. In the Refusal Letter the Respondent accepted some aspects of his claim.
6. The central submission was that in considering the claim the judge had not recognised nor therefore given due weight to the significance to the claim of the Appellant’s family. Within the LTTE they were regarded as a Heroes Family and a family of prominent martyrs. Such families were held up as inspirational role models within the LTTE. The authorities knew of this family connection. When they interviewed the Appellant in detention they questioned him whether he was a tiger cub and whether he was helping to rebuild the LTTE. His family connection contributed to the ill-treatment to which they subjected him. In post conflict Sri Lanka it was enough for them to treat him as hostile to the unitary state. The failure to appreciate the significance of this connection fed into the assessment of risk in terms

of the risk categories in **GJ and Others (Post-civil war: Returnees) Sri Lanka CG** [2013] UKUT 319 (IAC). In finding that it was implausible that the Appellant would have been released from detention on payment of a bribe, the judge did not have regard to the findings to the contrary at paragraphs 146 and 275 of **GJ**.

7. It is also submitted that, in rejecting at paragraph 37 the medical report for want of corroborative evidence, the judge erred in law.
8. The judge did refer to the Appellant's family at paragraphs 40 and 48. However this was in terms of there having been nothing to link the Appellant to relatives who had been killed fifteen or twenty years ago. To have stated that they did not bear the same family name was erroneous, as Sri Lankan family names do not work in this way.
9. The permission application can be considered to represent disagreement with the judicial findings, and the Respondent so argued. However I have concluded that the core of the Appellant's narrative is his membership of a high profile LTTE family. This fact was known to the authorities, who interrogated him about it. It contributed to his ill-treatment, and contributes to the assessment of risk. It was, I conclude, accorded insufficient weight. The rejection of the Appellant's evidence was compounded by the error of requiring corroborative evidence of the medical report. These errors were material, because they were capable of affecting the outcome of the appeal.
10. I accordingly conclude that the decision must be set aside and the appeal reheard. In this event both parties agreed that it should be reheard in the First-tier Tribunal.

Decision

11. The original determination contained an error of law and is set aside.
12. The appeal is to be reheard in the First-tier Tribunal at Taylor House by any judge other than Judge Bart-Stewart.
13. No anonymity direction is made.

Signed

Dated: 11 January 2016

Deputy Upper Tribunal Judge J M Lewis